

**ASSEMBLY BILL**

**No. 2266**

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**Introduced by Assembly Member Waldron**

February 21, 2014

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An act to amend Section 5346 of, and to add Section 5349.3 to, the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2266, as introduced, Waldron. Mental health: assisted outpatient treatment.

Existing law, known as Laura's Law, until January 1, 2017, regulates designated assisted outpatient treatment services, which a county may, by resolution, choose to provide for its residents. In a county where assisted outpatient treatment services are available, a court may order a person to receive assisted outpatient treatment for an initial period not to exceed 6 months if the court finds the requisite criteria are met, as specified.

This bill would authorize the court to order a person to receive assisted outpatient treatment for an initial period not to exceed 12 months.

Existing law, the Lanterman-Petris-Short Act, authorizes the involuntary detention for a period of 72 hours for evaluation of persons who are dangerous to self or others, or gravely disabled, as defined. Existing law provides that if a person is detained for 72 hours or under court order for evaluation and has received an evaluation, he or she may be certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism if certain conditions are met, as specified. Under existing law, a person may be certified for intensive treatment for an additional period of time if he or she remains gravely disabled or unwilling or unable to accept

voluntary treatment or if he or she was suicidal, as specified, or may be confined for postcertification treatment for up to 180 days if he or she has, among other things, attempted or inflicted physical harm upon another person, as specified.

This bill would, in a county that elects to implement Laura's Law, upon the release of a person from intensive treatment or postcertification treatment described above, authorize the professional staff of the agency or facility that provided the treatment to evaluate whether the person meets the criteria for assisted outpatient treatment. This bill would authorize the professional staff to request the county mental health director to file a petition in the superior court for assisted outpatient treatment if that person meets that criteria.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 5346 of the Welfare and Institutions Code  
2     is amended to read:  
3     5346. (a) In any county ~~in which~~ *where* services are available  
4     as provided in Section 5348, a court may order a person who is  
5     the subject of a petition filed pursuant to this section to obtain  
6     assisted outpatient treatment if the court finds, by clear and  
7     convincing evidence, that the facts stated in the verified petition  
8     filed in accordance with this section are true and establish that all  
9     of the requisite criteria set forth in this section are met, including,  
10    but not limited to, each of the following:  
11    (1) The person is 18 years of age or older.  
12    (2) The person is suffering from a mental illness as defined in  
13    paragraphs (2) and (3) of subdivision (b) of Section 5600.3.  
14    (3) There has been a clinical determination that the person is  
15    unlikely to survive safely in the community without supervision.  
16    (4) The person has a history of lack of compliance with  
17    treatment for his or her mental illness, in that at least one of the  
18    following is true:  
19    (A) The person's mental illness has, at least twice within the  
20    last 36 months, been a substantial factor in necessitating  
21    hospitalization, or receipt of services in a forensic or other mental  
22    health unit of a state correctional facility or local correctional  
23    facility, not including any period during which the person was

1 hospitalized or incarcerated immediately preceding the filing of  
2 the petition.

3 (B) The person's mental illness has resulted in one or more acts  
4 of serious and violent behavior toward himself or herself or  
5 another, or threats, or attempts to cause serious physical harm to  
6 himself or herself or another within the last 48 months, not  
7 including any period in which the person was hospitalized or  
8 incarcerated immediately preceding the filing of the petition.

9 (5) The person has been offered an opportunity to participate  
10 in a treatment plan by the director of the local mental health  
11 department, or his or her designee, provided the treatment plan  
12 includes all of the services described in Section 5348, and the  
13 person continues to fail to engage in treatment.

14 (6) The person's condition is substantially deteriorating.

15 (7) Participation in the assisted outpatient treatment program  
16 would be the least restrictive placement necessary to ensure the  
17 person's recovery and stability.

18 (8) In view of the person's treatment history and current  
19 behavior, the person is in need of assisted outpatient treatment in  
20 order to prevent a relapse or deterioration that would be likely to  
21 result in grave disability or serious harm to himself or herself, or  
22 to others, as defined in Section 5150.

23 (9) It is likely that the person will benefit from assisted  
24 outpatient treatment.

25 (b) (1) A petition for an order authorizing assisted outpatient  
26 treatment may be filed by the county mental health director, or his  
27 or her designee, in the superior court in the county ~~in which~~ *where*  
28 the person who is the subject of the petition is present or reasonably  
29 believed to be present.

30 (2) A request may be made only by any of the following persons  
31 to the county mental health department for the filing of a petition  
32 to obtain an order authorizing assisted outpatient treatment:

33 (A) Any person 18 years of age or older with whom the person  
34 who is the subject of the petition resides.

35 (B) Any person who is the parent, spouse, or sibling or child  
36 18 years of age or older of the person who is the subject of the  
37 petition.

38 (C) The director of any public or private agency, treatment  
39 facility, charitable organization, or licensed residential care facility  
40 providing mental health services to the person who is the subject

1 of the petition in whose institution the subject of the petition  
2 resides.

3 (D) The director of a hospital in which the person who is the  
4 subject of the petition is hospitalized.

5 (E) A licensed mental health treatment provider who is either  
6 supervising the treatment of, or treating for a mental illness, the  
7 person who is the subject of the petition.

8 (F) A peace officer, parole officer, or probation officer assigned  
9 to supervise the person who is the subject of the petition.

10 (G) *The professional staff of an agency or facility, as specified*  
11 *in Section 5349.3.*

12 (3) Upon receiving a request pursuant to paragraph (2), the  
13 county mental health director shall conduct an investigation into  
14 the appropriateness of ~~the~~ filing of the petition. The director shall  
15 file the petition only if he or she determines that there is a  
16 reasonable likelihood that all the necessary elements to sustain the  
17 petition can be proven in a court of law by clear and convincing  
18 evidence.

19 (4) The petition shall state all of the following:

20 (A) Each of the criteria for assisted outpatient treatment as set  
21 forth in subdivision (a).

22 (B) Facts that support the petitioner's belief that the person who  
23 is the subject of the petition meets each criterion, provided that  
24 the hearing on the petition shall be limited to the stated facts in  
25 the verified petition, and the petition contains all the grounds on  
26 which the petition is based, in order to ensure adequate notice to  
27 the person who is the subject of the petition and his or her counsel.

28 (C) That the person who is the subject of the petition is present,  
29 or is reasonably believed to be present, within the county where  
30 the petition is filed.

31 (D) That the person who is the subject of the petition has the  
32 right to be represented by counsel in all stages of the proceeding  
33 under the petition, in accordance with subdivision (c).

34 (5) The petition shall be accompanied by an affidavit of a  
35 licensed mental health treatment provider designated by the local  
36 mental health director who shall state, if applicable, either of the  
37 following:

38 (A) That the licensed mental health treatment provider has  
39 personally examined the person who is the subject of the petition  
40 no more than 10 days prior to the submission of the petition, the

1 facts and reasons why the person who is the subject of the petition  
2 meets the criteria in subdivision (a), that the licensed mental health  
3 treatment provider recommends assisted outpatient treatment for  
4 the person who is the subject of the petition, and that the licensed  
5 mental health treatment provider is willing and able to testify at  
6 the hearing on the petition.

7 (B) That no more than 10 days prior to the filing of the petition,  
8 the licensed mental health treatment provider, or his or her  
9 designee, has made appropriate attempts to elicit the cooperation  
10 of the person who is the subject of the petition, but has not been  
11 successful in persuading that person to submit to an examination,  
12 that the licensed mental health treatment provider has reason to  
13 believe that the person who is the subject of the petition meets the  
14 criteria for assisted outpatient treatment, and that the licensed  
15 mental health treatment provider is willing and able to examine  
16 the person who is the subject of the petition and testify at the  
17 hearing on the petition.

18 (c) The person who is the subject of the petition shall have the  
19 right to be represented by counsel at all stages of a proceeding  
20 commenced under this section. If the person so elects, the court  
21 shall immediately appoint the public defender or other attorney to  
22 assist the person in all stages of the proceedings. The person shall  
23 pay the cost of the legal services if he or she is able.

24 (d) (1) Upon receipt by the court of a petition submitted  
25 pursuant to subdivision (b), the court shall fix the date for a hearing  
26 at a time not later than five *business* days from the date the petition  
27 is received by the court, ~~excluding Saturdays, Sundays, and~~  
28 ~~holidays.~~ *court*. The petitioner shall promptly cause service of a  
29 copy of the petition, together with written notice of the hearing  
30 date, to be made personally on the person who is the subject of the  
31 petition, and shall send a copy of the petition and notice to the  
32 county office of patient rights, and to the current health care  
33 provider appointed for the person who is the subject of the petition,  
34 ~~if any such~~ *that* provider is known to the petitioner. Continuances  
35 shall be permitted only for good cause shown. In granting  
36 continuances, the court shall consider the need for further  
37 examination by a physician or the potential need to provide  
38 expeditiously assisted outpatient treatment. Upon the hearing date,  
39 or upon any other date or dates to which the proceeding may be  
40 continued, the court shall hear testimony. If it is deemed advisable

1 by the court, and if the person who is the subject of the petition is  
2 available and has received notice pursuant to this section, the court  
3 may examine in or out of court the person who is the subject of  
4 the petition who is alleged to be in need of assisted outpatient  
5 treatment. If the person who is the subject of the petition does not  
6 appear at the hearing, and appropriate attempts to elicit the  
7 attendance of the person have failed, the court may conduct the  
8 hearing in the person's absence. If the hearing is conducted without  
9 the person present, the court shall set forth the factual basis for  
10 conducting the hearing without the person's presence.

11 (2) The court shall not order assisted outpatient treatment unless  
12 an examining licensed mental health treatment provider, who has  
13 personally examined, and has reviewed the available treatment  
14 history of, the person who is the subject of the petition within the  
15 time period commencing 10 days before the filing of the petition,  
16 testifies in person at the hearing.

17 (3) If the person who is the subject of the petition has refused  
18 to be examined by a licensed mental health treatment provider,  
19 the court may request that the person consent to an examination  
20 by a licensed mental health treatment provider appointed by the  
21 court. If the person who is the subject of the petition does not  
22 consent and the court finds reasonable cause to believe that the  
23 allegations in the petition are true, the court may order ~~any~~ a person  
24 designated under Section 5150 to take into custody the person who  
25 is the subject of the petition and transport him or her, or cause him  
26 or her to be transported, to a hospital for examination by a licensed  
27 mental health treatment provider as soon as is practicable.  
28 Detention of the person who is the subject of the petition under  
29 the order may not exceed 72 hours. If the examination is performed  
30 by another licensed mental health treatment provider, the  
31 examining licensed mental health treatment provider may consult  
32 with the licensed mental health treatment provider whose  
33 affirmation or affidavit accompanied the petition regarding the  
34 issues of whether the allegations in the petition are true and whether  
35 the person meets the criteria for assisted outpatient treatment.

36 (4) The person who is the subject of the petition shall have all  
37 of the following rights:

38 (A) To adequate notice of the hearings to the person who is the  
39 subject of the petition, as well as to parties designated by the person  
40 who is the subject of the petition.

1 (B) To receive a copy of the court-ordered evaluation.

2 (C) To counsel. If the person has not retained counsel, the court  
3 shall appoint a public defender.

4 (D) To be informed of his or her right to judicial review by  
5 habeas corpus.

6 (E) To be present at the hearing unless he or she waives the  
7 right to be present.

8 (F) To present evidence.

9 (G) To call witnesses on his or her behalf.

10 (H) To cross-examine witnesses.

11 (I) To appeal decisions, and to be informed of his or her right  
12 to appeal.

13 (5) (A) If after hearing all relevant evidence, the court finds  
14 that the person who is the subject of the petition does not meet the  
15 criteria for assisted outpatient treatment, the court shall dismiss  
16 the petition.

17 (B) If after hearing all relevant evidence, the court finds that  
18 the person who is the subject of the petition meets the criteria for  
19 assisted outpatient treatment, and there is no appropriate and  
20 feasible less restrictive alternative, the court may order the person  
21 who is the subject of the petition to receive assisted outpatient  
22 treatment for an initial period not to exceed ~~six~~ 12 months. In  
23 fashioning the order, the court shall specify that the proposed  
24 treatment is the least restrictive treatment appropriate and feasible  
25 for the person who is the subject of the petition. The order shall  
26 state the categories of assisted outpatient treatment, as set forth in  
27 Section 5348, that the person who is the subject of the petition is  
28 to receive, and the court may not order treatment that has not been  
29 recommended by the examining licensed mental health treatment  
30 provider and included in the written treatment plan for assisted  
31 outpatient treatment as required by subdivision (e). If the person  
32 has executed an advance health care directive pursuant to Chapter  
33 2 (commencing with Section 4650) of Part 1 of Division 4.7 of  
34 the Probate Code, any directions included in the advance health  
35 care directive shall be considered in formulating the written  
36 treatment plan.

37 (6) If the person who is the subject of a petition for an order for  
38 assisted outpatient treatment pursuant to subparagraph (B) of  
39 paragraph (5) ~~of subdivision (d)~~ refuses to participate in the assisted  
40 outpatient treatment program, the court may order the person to

1 meet with the assisted outpatient treatment team designated by the  
2 director of the assisted outpatient treatment program. The treatment  
3 team shall attempt to gain the person's cooperation with treatment  
4 ordered by the court. The person may be subject to a 72-hour hold  
5 pursuant to subdivision (f) only after the treatment team has  
6 attempted to gain the person's cooperation with treatment ordered  
7 by the court, and has been unable to do so.

8 (e) Assisted outpatient treatment shall not be ordered unless the  
9 licensed mental health treatment provider recommending assisted  
10 outpatient treatment to the court has submitted to the court a written  
11 treatment plan that includes services as set forth in Section 5348,  
12 and the court finds, in consultation with the county mental health  
13 director, or his or her designee, all of the following:

14 (1) That the services are available from the county, or a provider  
15 approved by the county, for the duration of the court order.

16 (2) That the services have been offered to the person by the  
17 local director of mental health, or his or her designee, and the  
18 person has been given an opportunity to participate on a voluntary  
19 basis, and the person has failed to engage in, or has refused,  
20 treatment.

21 (3) That all of the elements of the petition required by this article  
22 have been met.

23 (4) That the treatment plan will be delivered to the county  
24 director of mental health, or to his or her appropriate designee.

25 (f) If, in the clinical judgment of a licensed mental health  
26 treatment provider, the person who is the subject of the petition  
27 has failed or has refused to comply with the treatment ordered by  
28 the court, and, in the clinical judgment of the licensed mental health  
29 treatment provider, efforts were made to solicit compliance, and,  
30 in the clinical judgment of the licensed mental health treatment  
31 provider, the person may be in need of involuntary admission to  
32 a hospital for evaluation, the provider may request that persons  
33 designated under Section 5150 take into custody the person who  
34 is the subject of the petition and transport him or her, or cause him  
35 or her to be transported, to a hospital, to be held up to 72 hours for  
36 examination by a licensed mental health treatment provider to  
37 determine if the person is in need of treatment pursuant to Section  
38 5150. ~~Any continued~~ *Continued* involuntary retention in a hospital  
39 beyond the initial 72-hour period shall be pursuant to Section ~~5150.~~  
40 ~~5250.~~ If at any time during the 72-hour period the person is

1 determined not to meet the criteria of Section 5150, and does not  
2 agree to stay in the hospital as a voluntary patient, he or she shall  
3 be released and any subsequent involuntary detention in a hospital  
4 shall be pursuant to Section 5150. Failure to comply with an order  
5 of assisted outpatient treatment alone may not be grounds for  
6 involuntary civil commitment or a finding that the person who is  
7 the subject of the petition is in contempt of court.

8 (g) If the director of the assisted outpatient treatment program  
9 determines that the condition of the patient requires further assisted  
10 outpatient treatment, the director shall apply to the court, prior to  
11 the expiration of the period of the initial assisted outpatient  
12 treatment order, for an order authorizing continued assisted  
13 outpatient treatment for a period not to exceed 180 days from the  
14 date of the order. The procedures for obtaining ~~any~~ *an* order  
15 pursuant to this subdivision shall be in accordance with  
16 subdivisions (a) to (f), inclusive. The period for further involuntary  
17 outpatient treatment authorized by ~~any~~ *a* subsequent order under  
18 this subdivision may not exceed 180 days from the date of the  
19 order.

20 (h) At intervals of not less than 60 days during an assisted  
21 outpatient treatment order, the director of the outpatient treatment  
22 program shall file an affidavit with the court that ordered the  
23 outpatient treatment affirming that the person who is the subject  
24 of the order continues to meet the criteria for assisted outpatient  
25 treatment. At these times, the person who is the subject of the order  
26 shall have the right to a hearing on whether or not he or she still  
27 meets the criteria for assisted outpatient treatment if he or she  
28 disagrees with the director's affidavit. The burden of proof shall  
29 be on the director.

30 (i) During each 60-day period specified in subdivision (h), if  
31 the person who is the subject of the order believes that he or she  
32 is being wrongfully retained in the assisted outpatient treatment  
33 program against his or her wishes, he or she may file a petition for  
34 a writ of habeas corpus, thus requiring the director of the assisted  
35 outpatient treatment program to prove that the person who is the  
36 subject of the order continues to meet the criteria for assisted  
37 outpatient treatment.

38 (j) Any person ordered to undergo assisted outpatient treatment  
39 pursuant to this article, who was not present at the hearing at which  
40 the order was issued, may immediately petition the court for a writ

1 of habeas corpus. Treatment under the order for assisted outpatient  
2 treatment may not commence until the resolution of that petition.

3 SEC. 2. Section 5349.3 is added to the Welfare and Institutions  
4 Code, to read:

5 5349.3. (a) Upon the release of a person from involuntary  
6 treatment pursuant to Section 5257, 5264, 5270.35, or 5304, the  
7 professional staff of the agency or facility that provided that  
8 treatment may evaluate whether that person meets the criteria  
9 established in subdivision (a) of Section 5346 for assisted  
10 outpatient treatment.

11 (b) If that person meets the criteria in subdivision (a) of Section  
12 5346, the professional staff of the agency or facility may request  
13 the county mental health director, or his or her designee, to file a  
14 petition in the superior court pursuant to subdivision (b) of Section  
15 5346 for assisted outpatient treatment.

16 (c) This section shall apply only in counties that elect to  
17 implement Laura's Law pursuant to Section 5349.